

COMMENTS PROVIDED BY THE BUREAU OF INSURANCE AT THE MAY 3, 2010 MEETING OF THE DEFECTIVE DRYWALL TASK FORCE

What the Bureau of Insurance Is Doing

The State Corporation Commission's Bureau of Insurance (Bureau) has been actively monitoring the homeowners insurance marketplace to determine what impact Chinese¹ drywall has had on homeowners insurance coverage in Virginia. In November 2009, the Bureau conducted a survey of the top 10 groups of homeowners insurers in Virginia (representing approximately 80% of the market). The survey was recently updated in April. The responses from the updated survey are provided below:

- No respondent is currently asking questions about Chinese drywall as part of the new business application process or as part of the renewal underwriting process.
- No respondent is currently refusing to issue policies because of the existence of Chinese drywall.
- No respondent is non-renewing specifically because of the existence of Chinese drywall.
- However, when asked if they would non-renew homeowners policies because the property was vacant due to the presence of Chinese drywall, six respondents said they would non-renew; three said that they would generally non-renew vacant property but that they would consider making an exception depending on the length of time the property would be vacant or whether repairs were being made; one said it would continue coverage if the vacancy was due to Chinese drywall.
- No respondent is currently non-renewing or planning to non-renew policies because of claims related to Chinese drywall.
- Seven of the 10 respondents have received claims; three have not.
- Seventeen claims in total have been reported, and no claim has been paid.

Additionally, the Chairman of the House Commerce and Labor Committee asked the Bureau to review House Bill No. 44. The Bureau will report back to the Committee with its findings. As it was written, House Bill No. 44 would have prohibited the application of certain policy insurance exclusions when the damage was caused by Chinese drywall. For example, insurers would not have been allowed to apply exclusions based on (i) pollution; (ii) defective materials, construction, or design; or (iii) deterioration. In addition, the bill would have prevented insurers from excluding coverage for property damage where the loss or damage occurs while the dwelling is vacant or unoccupied because of Chinese drywall. The bill did not pass during the 2010 Legislative Session. The bill may be found at the following hyperlink: [HB44](#).

Useful Information for Consumers

Generally, Virginia law allows insurers to decide which properties they are willing to insure. In other words, an insurer can decide to non-renew coverage on a property because of the existence of Chinese drywall. Insurers can also decide to non-renew coverage because a property is vacant—regardless of the reason for the vacancy. Any homeowners in this situation should carefully review their policy to determine how vacancy affects the coverage.

Once a homeowners policy has been in effect for 90 days, Virginia law places certain restrictions on the insurance company's ability to terminate coverage. For example, after a policy has been in effect for 90 days, Virginia law (Section 38.2-2114) would not allow an insurer to terminate coverage before the

¹ In this document, the reference to Chinese drywall includes all defective drywall (manufactured in China and the United States) that causes corrosion to certain metals in the home, emits sulfur and other gases, and possibly causes health issues.

end of the current policy term because the home is vacant or the insurer learns that the home is affected by Chinese drywall. The statute may be found at the following hyperlink: [§ 38.2-2114 of the Code of Virginia](#).

Other Sources of Coverage

If you are denied a policy or receive a non-renewal notice from a homeowners insurer due to Chinese drywall or vacancy, there are several other sources of coverage that you can explore. The Virginia Property Insurance Association (VPIA) ([VPIA.com](#)) offers coverage to those homeowners who cannot otherwise obtain property insurance. The VPIA will provide coverage to *vacant* property with Chinese drywall as long as the owner is pursuing litigation or is actively seeking to restore the property to a habitable condition. Coverage is provided on a fire policy rather than on a homeowners policy, and a “vacant property surcharge” is applied. You may use the VPIA website to calculate the cost of such a policy in your area. The calculator can be found at: [VPIA Calculator](#). Coverage in the VPIA may be obtained from any licensed insurance agent in Virginia. If you have questions about the website, you may contact the VPIA at (804) 358-0416 or (800) 899-7973.

In addition to the VPIA, coverage may be obtained from insurers in the surplus lines market. A surplus lines broker can procure a policy for you from an insurer not licensed or regulated in Virginia. These surplus lines insurers are often willing to accept risks that licensed insurers will not accept because they have more flexibility in designing and pricing their policies. A list of surplus lines brokers may be obtained from the VPIA's website: [VPIA Surplus Lines Broker Information](#). In addition, there are other surplus lines brokers that can help you with coverage for your home. The Bureau encourages homeowners to get several quotes before making the decision to purchase coverage. Homeowners seeking coverage in the surplus lines market should compare the coverages offered by each insurer as well as the price.

How the Bureau Can Help

If you believe that your coverage has been improperly terminated, you have the right to request the Bureau to review the cancellation or nonrenewal of your homeowners policy to confirm that the termination complies with Virginia law. Additionally, if you believe your insurance company has refused to pay all or part of a valid claim, you have the right to file a complaint with the Bureau. Upon receipt of your complaint, the Bureau will thoroughly investigate your complaint, see that you get a clear response to your questions, and correct misunderstandings. However, the Bureau does not have the authority to determine whether coverage exists or how much a claim is worth. A court must make this determination. If the Bureau is unable to resolve a problem, we will tell you why. If the law and facts are on your side, we will try to see that your rights are protected and that your complaint is resolved in a satisfactory manner. The Bureau's website is: [BOI Consumer Assistance](#). You may also contact the Bureau at 1-877-317-6560 (Option 5).